

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JASMINE S. KINNISON,
Plaintiff,
v.
MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

NO. CV-11-0186-JLQ

MEMORANDUM OPINION AND
ORDER RE: MOTIONS FOR
SUMMARY JUDGMENT

BEFORE THE COURT are Cross-Motions for Summary Judgment. (ECF NO. 18 & 20). Plaintiff is represented by **Lora Lee Stover**. Defendant is represented by Assistant United States Attorney **Frank A. Wilson** and Special Assistant United States Attorney **Richard Morris**. This matter was previously before Magistrate Judge Imbrogno and set for hearing without oral argument. On October 30, 2012, the matter was reassigned to the undersigned for all further proceedings. The court has reviewed the record and the parties' briefs.

This court's role on review of the decision of the Administrative Law Judge (ALJ) is limited. The court reviews that decision to determine if it was supported by substantial evidence and contains a correct application of the law. *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). This court is obligated to affirm the ALJ's findings if they are supported by the evidence and reasonable inferences to be drawn therefrom. *Molina v. Astrue*, 674 F.3d 1104, 1110-11 (9th Cir. 2012). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.

I. JURISDICTION

In August 2007, Plaintiff Jasmine S. Kinnison filed an application for

1 Disability Insurance Benefits alleging a disability onset date of August 15, 2004.
2 Plaintiff alleges disability attributable to "severe mental conditions" (ECF No. 19,
3 p. 3) including depression and anxiety. Her application was denied initially, and
4 on reconsideration. After timely requesting a hearing, Plaintiff appeared before
5 Administrative Law Judge Moira Ausems on August 21, 2009. (Transcript at ECF
6 No. 9-2 pages 46-102). The ALJ issued a decision denying benefits on January 14,
7 2010. (ECF No. 9-2, p. 24-38). Plaintiff filed a request for review with the
8 Appeals Council, which was denied on April 19, 2011. The Appeals Council then
9 considered new evidence and again denied review on May 27, 2011. The decision
10 of the ALJ became the final decision of the Commissioner, which is appealable to
11 the district court pursuant to 42 U.S.C. § 405(g).

12 II. SEQUENTIAL EVALUATION PROCESS

13 The Social Security Act defines "disability" as the "inability to engage in
14 any substantial gainful activity by reason of any medically determinable physical
15 or mental impairment which can be expected to result in death or which has lasted
16 or can be expected to last for a continuous period of not less than twelve months."
17 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a claimant
18 shall be determined to be under a disability only if the impairments are of such
19 severity that the claimant is not only unable to do her previous work but cannot,
20 considering claimant's age, education and work experiences, engage in any other
21 substantial gainful work which exists in the national economy. 42 U.S.C. §§
22 423(d)(2)(A), 1382c(a)(3)(B).

23 The Commissioner has established a five-step sequential evaluation process
24 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920;
25 *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987).

26 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R.
27 §§ 404.1520(b), 416.920(b). If she is, benefits are denied. If she is not, the
28 decision maker proceeds to step two.

1 Step 2: Does the claimant have a medically severe impairment or
2 combination of impairments? 20 C.F.R. §§ 404.1520(c), 416.920(c). If the
3 claimant does not have a severe impairment or combination of impairments, the
4 disability claim is denied. If the impairment is severe, the evaluation proceeds to
5 the third step.

6 Step 3: Does the claimant's impairment meet or equal one of the listed
7 impairments acknowledged by the Commissioner to be so severe as to preclude
8 substantial gainful activity? 20 C.F.R. §§ 404.1520(d), 416.920(d); 20 C.F.R. Pt.
9 404 Subpt. P App. 1. If the impairment meets or equals one of the listed
10 impairments, the claimant is conclusively presumed to be disabled. If the
11 impairment is not one conclusively presumed to be disabling, the evaluation
12 proceeds to the fourth step.

13 Step 4: Does the impairment prevent the claimant from performing work she
14 has performed in the past? 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant
15 is able to perform her previous work, she is not disabled. If the claimant cannot
16 perform this work, the inquiry proceeds to the fifth and final step.

17 Step 5: Is the claimant able to perform other work in the national economy in
18 view of her age, education and work experience? 20 C.F.R. §§ 404.1520(f),
19 416.920(f).

20 The initial burden of proof rests upon the plaintiff to establish a prima facie
21 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921
22 (9th Cir. 1971). The initial burden is met once a claimant establishes that a
23 physical or mental impairment prevents her from engaging in her previous
24 occupation. The burden then shifts to the Commissioner to show (1) that the
25 claimant can perform other substantial gainful activity and (2) that a "significant
26 number of jobs exist in the national economy" which claimant can perform. *Kail v.*
27 *Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

III. STANDARD OF REVIEW

“The [Commissioner's] determination that a claimant is not disabled will be upheld if the findings of fact are supported by substantial evidence and the [Commissioner] applied the proper legal standards.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989). “It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). “[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence” will also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a whole, not just the evidence supporting the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). This court may set aside a denial of benefits only if the basis for denial is not supported by substantial evidence or if it is based on legal error. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). It is the role of the trier of fact, not this court, to resolve conflicts in the evidence. *Richardson*, 402 U.S. at 400. If the evidence supports more than one rational interpretation, the court must uphold the decision of the ALJ. *Thomas*, 278 F.3d at 954 (9th Cir. 2002).

IV. STATEMENT OF FACTS

The facts are contained in the medical records, administrative transcript, and the ALJ's decision, and are only briefly summarized here. At the time the ALJ issued her decision, Plaintiff was 34 years old. Plaintiff has a high school education, “some college”, and went through a Certified Nurse Assistant training program. (ECF No. 9-2, p. 51). She has held a variety of jobs including most recently working intermittently as a Certified Nurse Assistant from approximately 2003 to 2006. (*Id.* at 52). Prior to work as a CNA, Plaintiff had worked as a

1 telemarketer and cashier, and had worked as a banquet server and in retail. The
2 record establishes that Plaintiff had not worked since sometime in the latter half of
3 2006. (ECF No. 9-2, p. 68-71).

4 Plaintiff claimed disability based primarily on depression and anxiety.
5 Although Plaintiff alleged a variety of other “difficulties” such as low back pain,
6 neck, and thumb, she claimed that the mental health concerns outweighed the
7 physical impairments. (*Id.* at 49-50). Plaintiff alleged that the combined effect of
8 her impairments rendered her disabled. (*Id.* at 50). Although Plaintiff had a
9 history of substance abuse, Plaintiff was largely sober during the relevant time
10 period and her attorney represented that, “I don’t think there has been any material
11 usage throughout the relevant timeframe.” (*Id.* at 49). The ALJ found Plaintiff
12 was not disabled. Plaintiff raises several challenges to that determination,
13 including that the ALJ did not properly evaluate Plaintiff’s residual functional
14 capacity (“RFC”), erred in assessing Plaintiff’s credibility, and that the evidence
15 overall does not support the finding.

16 V. COMMISSIONER’S FINDINGS

17 The ALJ found at step one that Plaintiff had not engaged in substantial
18 gainful activity since May 12, 2005. The alleged onset date was August 15, 2004,
19 however Plaintiff had previously made a disability application that was denied on
20 May 11, 2005. The ALJ found Plaintiff did not establish good cause for reopening
21 the prior determination. (ECF No. 9-2, p. 24). Plaintiff does not challenge that she
22 failed to provide good cause for reopening, and thus the alleged onset date is May
23 12, 2005. The ALJ did note that Plaintiff worked for nine months in 2006 and
24 earned \$7,263, which approached but did not meet the level of substantial gainful
25 activity. In 2006, the substantial gainful activity amount was \$860/month. See
26 www.ssa.gov/oact/cola/sga.html (The official website of the SSA last visited
27 12/11/2012). Plaintiff’s nine month earnings of \$7,263 average \$807 per month.
28 Although earning this amount did not disqualify Plaintiff from a successful

1 disability benefits application, the ALJ observed that it also did not “support her
2 assertion of total disability.” (*Id.* at 27).

3 At step two, the ALJ found the medical evidence established that since the
4 date of May 12, 2005, Plaintiff had the following severe impairments: major
5 depressive disorder; generalized anxiety disorder; personality disorder; substance
6 abuse disorder; plantar fasciitis; mild lumbar degenerative disc disease; mild
7 cervical degenerative disc disease; migraine headaches; and knee sprain. (ECF No.
8 9-2, p. 27).

9 At Step 3, the ALJ determined that the Plaintiff’s impairments or
10 combination of impairments did not meet or medically equal one of the listed
11 impairments in 20 CFR Pt. 404 Subpt. P App 1. Specifically, the ALJ found that
12 Plaintiff’s mental impairments “considered singly and in combination, do not meet
13 or medically equal the criteria of listings 12.04, 12.06, and 12.09.” (*Id.* at 29).

14 At Step 4, the ALJ found that Plaintiff had the RFC to perform light work, if
15 that work did not require the performance of more than semi-skilled (SVP 3) tasks
16 or involve more than occasional contact with co-workers or more than casual
17 contact with the general public. (ECF No. 9-2, p. 30-31). In making this
18 determination, the ALJ found that Plaintiff’s “statements concerning the intensity,
19 persistence and limiting effects of her symptoms are not found to be credibly
20 supported by the weight of the evidence.” (*Id.* at 32). The ALJ further found that
21 Plaintiff’s subjective statements concerning her alleged symptoms were not
22 supported by objective medical findings. (*Id.*) The ALJ found the record to be
23 “replete with evidence documenting defiant behavior, failure to appear for
24 treatment, medication non-compliance, and failure to cooperate with recommended
25 treatment tools.” (*Id.* at 34). The ALJ also found that Plaintiff was unable to
26 perform her past relevant work.

27 At Step 5, the ALJ found, with the assistance of a vocational expert, that
28 Plaintiff could perform the jobs of Cleaner I (Dictionary of Occupational Titles #

1 323.687-014) and Mail Clerk (DOT # 222.687-022). The ALJ found that
2 significant numbers of these jobs existed both in the national and regional
3 economy and that Plaintiff could perform these jobs even if she was limited to no
4 more than very superficial contact with both co-workers and the general public.

5 VI. ISSUES

6 Plaintiff raises five issues on appeal: 1) the ALJ erred in disregarding the
7 opinions of the consultative examiners regarding Plaintiff's mental conditions; 2)
8 the ALJ erred in assessing the Plaintiff's RFC; 3) the ALJ erred in relying upon the
9 vocational expert's response to an improper hypothetical; 4) the ALJ erred in
10 assessing Plaintiff's credibility; and 5) the evidence taken as a whole does not
11 support the ALJ's determination. (ECF 19, p. 8-9). The court notes that the
12 argument supporting these five points is contained in five pages (*Id.* at p. 11-16).
13 Some of the issues/arguments do not appear to be clearly delineated.

14 VII. DISCUSSION

15 A. Did the ALJ err in disregarding the opinions of the consultative 16 examiners regarding Plaintiff's mental condition?

17 Plaintiff contends the ALJ improperly rejected the opinion of consultative
18 examiners. This claim is not supported by the evidence. The ALJ stated: "the
19 undersigned has given great weight to the opinions of the state agency medical
20 consultants who provided residual functional capacity assessments." (ECF No. 9-2,
21 p. 34). Plaintiff argues that the records of Spokane Mental Health support her
22 argument. The ALJ considered these records: "Records from Spokane Mental
23 Health do not reflect clinical findings of mental status abnormality or observations
24 of credible functional limitation that provide support for the claimant's assertion of
25 total disability." (*Id.*).

26 Plaintiff appears to argue that although the ALJ stated she was relying on
27 Dr. Bailey's assessment, she did not adequately consider it. That argument is not
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1 convincing. Dr. Bailey found Plaintiff had no “marked” or “extreme” limitations.
2 (ECF No. 9, p. 521). Dr. Bailey found Plaintiff had only “mild” restriction of the
3 activities of daily living and no episodes of decompensation. (*Id.*). Dr. Bailey
4 concluded that Plaintiff could work in an environment with superficial public and
5 co-worker contact. (ECF No. 9, p. 527).

6 The ALJ did not disregard the opinion of Dr. Bailey, and thus Plaintiff’s
7 contention that the ALJ erred in disregarding the opinion fails. As a final
8 observation on this point, it was not clearly briefed. The Defendant’s
9 Memorandum (ECF No. 21) took a broader approach to construing Plaintiff’s
10 argument and responds that the ALJ properly considered and evaluated all the
11 medical reports, including those of Dr. Mabee, Amy Robinson, MA, Dr. Bailey,
12 Dr. Rosekrans, and Ms. Gerry, M.Ed. (ECF No. 21, p. 11-17). The Defendant
13 argues that the ALJ gave adequate reasons for giving less evidentiary weight to the
14 opinions of Dr. Rosekrans and Dr. Mabee. The record supports that position.

15 **B. Did the ALJ err in assessing Plaintiff’s residual functional capacity?**

16 This argument was not thoroughly developed. The argument devoted to
17 this issue is one paragraph on page 13 of Plaintiff’s Memorandum. (ECF No. 19).
18 The argument is: “The ALJ ignored the effects of pain from Plaintiff’s physical
19 impairments, but more importantly the limitations posed by the Plaintiff’s mental
20 impairments.” (ECF No. 19, p. 13). The ALJ did consider Plaintiff’s allegations of
21 physical impairments, and found them largely not supported by the record. For
22 example, the ALJ observed that despite allegations of back pain “no treating or
23 examining medical source has reported that the claimant has any lifting
24 restrictions” and noted that the orthotics utilized by Plaintiff “were over-the-
25 counter cushions for her shoes as opposed to specialized assistive devices
26 constructed by a licensed professional.” (ECF No. 9-2, p. 31). The ALJ clearly
27 considered Plaintiff’s alleged physical limitations as she found the following
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1 physical impairments: plantar fasciitis; mild lumbar degenerative disc disease; mild
2 cervical degenerative disc disease; migraine headaches; and knee sprain.

3 The ALJ appropriately focused on Plaintiff's mental impairments, just as
4 Plaintiff has done in pursuing this claim. Plaintiff's Disability Report lists the
5 conditions that limit her ability to work as "anxiety and bi polar and depression".
6 (ECF No. 9-2, p. 169). Plaintiff's submittal before this court states that: "Plaintiff
7 alleges entitlement to benefits on the basis of having severe mental conditions."
8 (ECF No. 19, p. 3). The record does not reflect that her physical impairments are
9 disabling. To the contrary, the record shows that Plaintiff's physical complaints
10 are not substantiated or are exaggerated.

11 For example, Plaintiff complains of GERD (gastroesophageal reflux
12 disease) but the record shows that it was being effectively treated. (ECF No. 9, p.
13 407). Plaintiff told health care providers she "felt she had a stroke in January of
14 2006" that was never medically confirmed and that she also "endorsed
15 unconfirmed heart problems." (ECF No. 9, p. 477). In May 2008, she saw an ear,
16 nose, and throat specialist about alleged hearing problems. The conclusion of that
17 assessment was: "She has normal hearing thresholds today and her speech
18 discrimination is excellent." (ECF No. 9, p. 759). In October 2007 she saw an
19 orthopaedic specialist about thumb pain and was diagnosed with a "sprain", the
20 joint being "structurally normal and stable." (ECF No. 9, p. 763). The record also
21 reflects she suffered a knee sprain, but that was effectively treated with physical
22 therapy. (ECF No. 9, p. 827, "She states her knee pain has greatly improved since
23 participating in physical therapy."). Her lower back pain at some points was
24 believed to be sciatica, but in March 2010 was assessed as "does not appear to be
25 actually a sciatica issue, it appears more musculoligamentuous." (ECF No. 9, p.
26 895). A January 2010 report states: "MRI shows that she does not have any disk
27 herniation, spinal canal narrowing or foraminal narrowing that could account for
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1 her radicular symptoms.” (*Id.* at 899). Many of Plaintiff’s physical complaints are
2 not substantiated by objective medical assessments.

3 This court does not suggest that Plaintiff is deliberately manufacturing her
4 complaints of physical ailments, but rather that Plaintiff may be seeking health care
5 treatment more frequently than normal due to her anxiety disorder. The examining
6 physician at Rockwood Clinic stated in his report of January 13, 2010, when she
7 was assessing complaints of leg and back pain: “The patient also has a psychiatric
8 history including borderline personality disorder which may make it difficult to
9 assess her symptoms as this may play a role in that also.” (*Id.* at 899).

10 The ALJ did not err in assessing Plaintiff’s RFC. Plaintiff’s own Statement
11 of Health, Education, and Employment, dated August 9, 2007 (ECF No. 9, p. 186-
12 195) also supports a finding that she can perform light work. Her Function Report
13 indicates that she has no problems with self-care, she takes care of her pets,
14 prepares meals, does housework, and is able to handle her finances. (*Id.* at 188-
15 192). Additionally her Function Report indicates she self-reported going outside
16 “everyday” and socializing with others in person or on the phone “almost daily”.
17 (*Id.* at 191-92). This was in contrast to her testimony before the ALJ which was
18 that her anxiety prevents her from going out: “Well, it [anxiety episode] usually
19 doesn’t last just a day. It usually lasts about a week or two. At least once a
20 month.” (ECF No. 9-2, p. 80). Plaintiff reported to her registered nurse practitioner
21 in July 2007 that she had “been attending yoga, bike riding, and basically keeping
22 very active during the day.” (ECF No. 9, p. 495).

24 The ALJ’s assessment of Plaintiff’s RFC is supported by the record.

25 **C. Did the ALJ err in relying upon the vocational expert’s response to a**
26 **hypothetical?**

27 The ALJ posed three different hypotheticals to the vocational expert. The
28 expert identified three types of work Plaintiff could perform: Home Health Aide

1 (her prior work), Cleaner 1, and Mail Clerk. Plaintiff's counsel questioned the
2 expert on cross-examination as to whether Plaintiff could return to her past
3 employment as a home health aide. This challenge was apparently successful, as
4 the ALJ concluded that Plaintiff could not perform her past work as a home health
5 aide.

6 Plaintiff contends that the ALJ should have followed the third hypothetical
7 in which it was assumed that Plaintiff had such marked limitations in dealing with
8 supervisors, coworkers, or the general public that she would require unscheduled
9 breaks and absences. The second hypothetical, which the ALJ apparently did rely
10 on, posed that Plaintiff had a "marked degree of social functioning limitation" and
11 would therefore be limited to "very superficial" social contact. Given those
12 parameters, the vocational expert still opined that Plaintiff could perform the Mail
13 Clerk and Cleaner 1 jobs.

14 The ALJ's hypotheticals were appropriate. An ALJ is required to include
15 only those limitations she finds supported by substantial evidence in her
16 hypothetical question. *Osenbrock v. Apfel*, 240 F.3d 1157, 1162-63 (9th Cir. 2001).
17 The record does not demonstrate that Plaintiff's psychological problems would
18 result in numerous unpredictable absences. In 2007, Dr. Scott Mabey and Kristin
19 Sims performed a psychological evaluation. It contained a section entitled,
20 "Barriers to Employment," and this section contains no mention that Plaintiff
21 would require unscheduled breaks or absences. (ECF No. 9, p. 443). Although the
22 report recognizes that Plaintiff's conditions "make her limited in the work force," it
23 concludes that she would benefit from job skills training to increase her ability to
24 return to work. It also reports that she would "feel more comfortable in social
25 situations where there are only a few people or one on one." (*Id.*). A psychological
26 evaluation by Amy Robinson, MS, in March 2008, concluded that Plaintiff's
27 overall functioning "suggests that she would be unable to function in the typical
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1 work environment,” but did not opine that Plaintiff was likely to have numerous
2 unpredictable absences from work. (ECF No. 9, p. 591). A Psychological Services
3 Spokane report from March of 2009 did not find any “marked” limitations and
4 indicates that Plaintiff should not be impaired for longer than six months. At an
5 April 2010 doctor’s office visit for an elbow injury, Plaintiff apparently told the
6 physician her panic attacks were under control as the note reflects that chronic
7 problems including panic attacks were “under control per pt report with
8 medications and lifestyle changes.” (ECF No. 9, p. 928).

9 The ALJ did not err in framing the hypothetical questions or relying on the
10 vocational expert’s testimony.

11 **D. Did the ALJ err in assessing Plaintiff’s credibility?**

12 The ALJ found that Plaintiff’s statements concerning the intensity,
13 persistence and limiting effects of her symptoms were not credibly supported by
14 the evidence. (ECF No. 9-2, p. 32). An ALJ, when making a credibility
15 determination adverse to the Plaintiff, must give specific, clear, and convincing
16 reasons for doing so. *Thomas v. Barnhart*, 278 F.3d 947, 958-9 (9th Cir. 2002). If
17 the ALJ’s credibility finding is supported by substantial evidence in the record,
18 then the court must not engage in second-guessing. *Id.* at 959. The ALJ’s
19 reasoning in this case is extensive and sets forth specific, clear, and convincing
20 reasons. The ALJ noted Plaintiff’s secondary gain motivation which she expressed
21 when she told a therapist that she couldn’t work for a year, due to the application
22 process for Social Security. (ECF No. 9, p. 32 & 377). The ALJ also found that
23 Plaintiff’s statements about substance abuse were unreliable and inconsistent (*Id.* at
24 33). The ALJ found that Plaintiff had been jailed for a domestic abuse allegation
25 in 2007, and that after allegedly hitting her head after falling from a bunk at the
26 jail, a physician had noted possible drug seeking behavior - - being “very insistent”
27 in a request for Demerol and not appearing to be in as much pain as she claimed.
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(*Id.* at 33). The ALJ also found the record to be “replete with evidence documenting defiant behavior, failure to appear for treatment...” (*Id.* at 34).

The ALJ gave clear and adequate reasons for her credibility determinations. An ALJ is responsible for determining credibility, resolving conflicts in the medical testimony, and resolving ambiguities. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). The ALJ’s credibility determinations are adequately supported by the record.

E. Does the record as a whole support the ALJ’s determination that Plaintiff is not disabled?

Although listed as a separate issue on appeal, there is no separate argument devoted to this point. Thus, this point must rely on the arguments presented in the four prior points; arguments which this court has rejected. The record as a whole supports the ALJ’s determination. Plaintiff is a younger individual, in her 30’s, who has a high school education and received some specialized training as a CNA. The ALJ properly considered all of Plaintiff’s impairments and found they did not render her unable to work and thus she was not disabled.

The Commissioner’s and ALJ’s decision is supported by substantial evidence in the record and is based on proper legal standards. It must therefor be affirmed. *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007).

VIII. CONCLUSION

For the aforesaid reasons, the Commissioner’s decision must be and is affirmed.

IT IS HEREBY ORDERED:

1. Plaintiff’s Motion for Summary Judgment (ECF No. 18) is **DENIED**.

2. Defendant’s Motion for Summary Judgment (ECF No. 20) is **GRANTED**.

3. The Clerk is directed to enter Judgment dismissing the Complaint and the

1 claims therein with prejudice.

2 **IT IS SO ORDERED.** The District Court Executive is directed to file this
3 Order, enter Judgment as directed above, and close this file.

4 DATED this 26th day of December, 2012.

5 s/ Justin L. Quackenbush
6 JUSTIN L. QUACKENBUSH
7 SENIOR UNITED STATES DISTRICT JUDGE
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